

Restricted
HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan
15 October 1948

UNITED STATES OF AMERICA VS TOSHIO GOTO
UNITED STATES OF AMERICA VS SHUICHI TAKATA
UNITED STATES OF AMERICA VS SHIGEKI ETO
UNITED STATES OF AMERICA VS BENJI ITO
UNITED STATES OF AMERICA VS TSUZUO OTA

Review of the Staff Judge Advocate

1. The attached record of trial of Toshio Goto, Shuichi Takata, Shigeki Eto, Benji Ito, and Tsuzuo Ota, at Yokohama, Japan, from 24 February 1947 to 26 March 1947, by a Military Commission appointed by paragraph 33, Special Orders No. 41, Headquarters Eighth Army, United States Army, dated 18 February 1947, having been referred to the Staff Judge Advocate, this review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Toshio Goto
AGE: 31
RESIDENCE: Fukuoka Ken Aaza Nanazuta
Ebisu Machi No. 3 Chome
MARITAL STATUS: Single
RELATIVES: Not Given
EDUCATION: Not Given
VOCATION: Not Given
MILITARY CAREER: Inducted 10 January
1938 - Discharged 31 July 1940;
Served as civilian employee at the
Fukuoka Prisoner of War Camp #8b from
1 June 1944 until the termination of
hostilities.

DATE OF CONFINEMENT: 22 November 1945
DATE OF ARRAIGNMENT: 24 February 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 24 February 1947 -
26 March 1947
DATE OF SENTENCE: 26 March 1947
SENTENCE: CHL for forty (40) years
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Shuichi Takata
AGE: 41
RESIDENCE: Fukuoka Itoshima Gun
Nogitamura 1950 Banchi
MARITAL STATUS: Married
RELATIVES: 2 children
EDUCATION: Not Given
VOCATION: Not Given
MILITARY CAREER: Inducted 1 February
1933 - Discharged 31 October 1933;
Re-entered September 1937 - Discharged
March 1939; Re-entered July 1940 -
Discharged November 1940; Re-entered
July 1941 - Discharged June 1944;
Re-entered February 1945 - Served until
the termination of hostilities.

DATE OF CONFINEMENT: 28 November 1945
DATE OF ARRAIGNMENT: 24 February 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 24 February 1947 -
26 March 1947
DATE OF SENTENCE: 26 March 1947
SENTENCE: CHL for forty (40) years.
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Shigeki Eto
 AGE: 36
 RESIDENCE: Oita Ken, Kaho-Gun, Misimi,
 Yamano Machi, 177
 MARITAL STATUS: Married
 RELATIVES: Wife, 4 Children, and Sister's
 Child.
 EDUCATION: Not Given
 VOCATION: Employee of an Electric Company.
 MILITARY CAREER: Inducted March 1941 -
 Discharged 30 November 1943: Civilian
 employee of the Fukuoka Prisoner of
 War Camp from March 1944 until 16
 August 1945, the termination of
 hostilities.

DATE OF CONFINEMENT: 4 November 1946
 DATE OF ARRAIGNMENT: 24 February 1947
 PLACE OF TRIAL: Yokohama, Japan
 PERIOD OF TRIAL: 24 February 1947 -
 26 March 1947
 DATE OF SENTENCE: 26 March 1947
 SENTENCE: CHL for thirty (30) years.
 CLEMENCY RECOMMENDED BY COMMISSION: No.

NAME: Benji Ito
 AGE: 62
 RESIDENCE: Fukuoka Ken, Kaho-Gun,
 Inatsuki Machi, Sendai Bo, 424
 MARITAL STATUS: Married
 RELATIVES: 8 Children.
 EDUCATION: Attended school until 11
 years old.
 VOCATION: Farmer and Miner.
 MILITARY CAREER: None

DATE OF CONFINEMENT: 23 September 1946
 DATE OF ARRAIGNMENT: 24 February 1947
 PLACE OF TRIAL: Yokohama, Japan
 PERIOD OF TRIAL: 24 February 1947 -
 26 March 1947.
 DATE OF SENTENCE: 26 March 1947
 SENTENCE: CHL for twenty (20) years.
 CLEMENCY RECOMMENDED BY COMMISSION: No.

NAME: Tsuzuo Ota
 AGE: 26
 RESIDENCE: Fukuoka Ken, Kaho Gun,
 Inatsuki Machi Hira, Sakai 8-12.
 MARITAL STATUS: Single
 RELATIVES: Mother
 EDUCATION: Not Given
 VOCATION: Not Given.
 MILITARY CAREER: Inducted 10 January
 1942 - Discharged February 1944;
 Employed at Fukuoka Prisoner of War
 Camp from April 1944 to November 1944;
 Terminated employment because of illness.
 Resumed employment in April 1945 and
 worked until the termination of
 hostilities.

DATE OF CONFINEMENT: 4 November 1946
 DATE OF ARRAIGNMENT: 24 February 1947
 PLACE OF TRIAL: Yokohama, Japan
 PERIOD OF TRIAL: 24 February 1947 -
 26 March 1947.
 DATE OF SENTENCE: 26 March 1947
 SENTENCE: CHL for thirty (30) years.
 CLEMENCY RECOMMENDED BY COMMISSION: No.

2. Synopsis of Charges, Pleas, Findings, and Legal Sufficiency:

<u>Charge and Specifications:</u>	<u>Pleas:</u>	<u>Findings:</u>	<u>Legally Sustained</u>
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GOTO

Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	NG	G	Yes
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Sp 1: That on or about 9 August 1945 at Fukuoka POW Camp #8b, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully mistreat, abuse, and beat Hendricus Johannes Ludovicus Groos, a Dutch POW, and Edward O. Elmore Jr., an American POW.	NG	G	Yes
Sp 2: That in or about the month of August 1945, at Fukuoka POW Camp #8b, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully mistreat, torture, abuse, and beat Michael A. Tardivo, Emmette Smith, George Martinez, Henri A. Pacheco, Frank Erba, Edward Greer, American POWs, and several other unidentified Allied POWs.	NG	G	Yes
Sp 3: That between 1 May 1944 and 31 August 1945, at Fukuoka POW Camp #8b, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully misappropriate and convert to his own use Red Cross supplies intended for the use and benefit of Allied POWs.	NG	G	Yes
Sp 4: That on or about the first day of August 1945, at Fukuoka POW Camp #8b, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully mistreat, abuse, and beat Sergeant Harry D. Reilich, an American POW.	NG	G	Yes
Sp 5: That between 1 May 1944 and 31 August 1945 at Fukuoka POW Camp #8b, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully mistreat, torture, abuse, and beat numerous American and Allied POWs.	NG	G	Yes

TAKATA

Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	NG	G	Yes
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Sp 1: That between 1 May 1945 and 31 August 1945, at Fukuoka POW Camp #8b, Fukuoka Area, Kyushu, Japan, accused did unlawfully disregard and fail to discharge his duty as Commander of said Camp by failing and neglecting to provide adequate quarters, food and medical care, thereby contributing to the serious illness and disability of numerous Allied POWs.	NG	G	Yes
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Sp 2: That between 1 May 1945 and 31 August 1945, at Fukuoka POW Camp #8b, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully misappropriate and withhold Red Cross supplies intended for the use and benefit of Allied POWs.	NG	G	Yes
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Sp 3: That between 1 May 1945 and 31 August 1945, at Fukuoka POW Camp #8b, Fukuoka Area, Kyushu, Japan, accused did unlawfully disregard and fail to discharge his duty as commander of said camp by compelling and permitting Allied POWs to work in and about a coal mine under	NG	G	Yes
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dangerous, hazardous, and unhealthy conditions, wherein the said Allied POWs were subjected to cruel and brutal tortures and other abuses and mistreatment by Japanese civilians employed by the said mines, thereby causing many of the said Allied POWs to be injured and to become sick and diseased.

Sp 4: That between 1 May 1945 and 31 August 1945, at Fukuoka POW Camp #8b, Fukuoka Area, Kyushu, Japan, accused did unlawfully disregard and fail to discharge his duties as Commander of said camp to restrain and control members of his command and persons under his supervision and control, by permitting them to commit the following atrocities and other offenses against Allied POWs.

NG G Yes

a. Between 1 May 1945 and 31 August 1945, the stealing, withholding, and misuse of Red Cross supplies intended for the use and benefit of Allied POWs.

NG G Yes

b. On or about 9 August 1945, the unlawful mistreatment, abuse, and beating by Toshio Goto, and others, of Hendricus Johannes Ludovicus Groos, a Dutch POW, and Edward O. Elmore Jr, an American POW.

NG G Yes

c. On or about 9 August 1945, the unlawful mistreatment of Michael A. Tardivo, Emmette Smith, George Martinez, Henri A. Pacheco, Frank Erba, and Edward Greer, American POWs, and other unidentified Allied POWs by beating and otherwise abusing them.

NG G Yes

d. On or about 1 August 1945, the unlawful mistreatment by Toshio Goto of Sergeant Harry D. Reilich, an American POW, by beating and otherwise abusing him.

NG G Yes

e. On or about 1 July 1945, the unlawful mistreatment and abuse by Shigeki Eto of Private C. J. Keller, an American POW, by beating him.

NG G Yes

f. On or about 3 July 1945, the unlawful mistreatment and abuse by Tsuzuo Ota of Corporal Michael A. Tardivo, an American POW, by beating him.

NG G Yes

g. During the month of July 1945, the unlawful mistreatment and abuse by Tsuzuo Ota of Bill Garrison, an American POW, by beating him.

NG G Yes

h. During the month of July 1945, the unlawful mistreatment by Tsuzuo Ota of Private E. O. Elmore Jr, an American POW, by beating and otherwise abusing him.

NG G Yes

i. On or about 5 June 1945, the unlawful mistreatment and abuse by one "Sakai-San" of Michael A. Tardivo and Eugene Stevens, American POWs, by beating them.

NG G Yes

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j. During the month of July 1945, the unlawful mistreatment and abuse by a guard known as "Stiff Leg" of Frank Erba, an American POW, and an unidentified Dutch POW, by beating them. NG G Yes

k. On or about 15 July 1945, the unlawful mistreatment and abuse by one Sakai of Eugene Stevens, an American POW, by beating him. NG G Yes

l. On or about 10 August 1945, the unlawful mistreatment and abuse of George Martinez, an American POW, by beating him with a steel shaft until he became unconscious. NG G Yes

m. During the month of June 1945, the unlawful mistreatment and abuse of George Martinez, an American POW, by beating him with a rifle butt. NG G Yes

n. Between 1 May 1945 and 31 August 1945, the unlawful mistreatment, abuse and beatings of numerous Allied POWs other than as alleged in Specification 1 to 4-m, inclusive. NG G Yes

ETO

Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War. NG G Yes

Sp 1: That in or about July 1945, at Fukuoka POW Camp #8b, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully mistreat Clifford Keller, an American POW, by beating and otherwise abusing him. NG G Yes

Sp 2: That in or about July 1945, at Fukuoka POW Camp #8b, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully mistreat and abuse Johannes Pieter Gerbranda and another unidentified Dutch POW, by torturing them. NG G Yes

Sp 3: That between 1 February 1943 and 31 August 1945, at Fukuoka POW Camp #8b, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully mistreat numerous American and Allied POWs, by beating and otherwise abusing them. NG G Yes

ITO

Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War. NG G Yes

Sp 1: That in or about January 1944, at Mitsui Yamano Kogyo-sho Dai Ni, Kofune-ko Coal Mine, Kamo, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully mistreat and abuse Robert Allen Cox, a British POW, by beating him. NG G Yes

Sp 2: That in or about February 1945, at Mitsui Yamano Kogyo-sho, Dai Ni, Kofune-ko Coal Mine, Kamo, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully mistreat and abuse Thomas Edgar Wakes, a British POW, by beating him on the head with a hammer until he became unconscious.	NG	G	Yes
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Sp 3: That in or about January 1945, at Mitsui Yamano Kogyo-sho, Dai Ni, Kofune-ko Coal Mine, Kamo, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully mistreat and abuse Basil Rhodes Marriner, a British POW, by beating him with the flat side of a pick axe.	NG	G	Yes
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Sp 4: That in or about July 1945, at Mitsui Yamano Kogyo-sho, Dai Ni, Kofune-ko Coal Mine, Kamo, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully mistreat and abuse Arthur William Frederick Clarke, a British POW, by beating him with fists and an axe handle.	NG	G	Yes
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Sp 5: That between 1 October 1943 and 31 August 1945, at Mitsui Yamano Kogyo-sho, Dai Ni, Kofune-ko Coal Mine, Kamo, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully mistreat Tom Careless, Robert E. Collins, Arthur James Brandon, Norman Frank Seaward, James William Kelsey, Thomas Halliwell, Henry Felix Jones, and William Clynes, British POWs, by beating, kicking, and otherwise abusing them.	NG	G	Yes
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Sp 6: That at divers times between 1 October 1943 and 31 August 1945, at Mitsui Yamano Kogyo-sho, Dai Ni, Kofune-ko Coal Mine, Kamo, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully mistreat numerous Allied POWs by beating, kicking, and otherwise abusing them.	NG	G	Yes
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OTA

Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	NG	G	Yes
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Sp 1: That on or about 20 July 1945, at Fukuoka POW Camp #8b, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully mistreat Michael Tardivo, an American POW, by beating him with a bayonet and fists and otherwise abusing him.	NG	G	Yes
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Sp 2: That on or about 1 July 1945, at Fukuoka POW Camp #8b, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully mistreat Bill Garrison, an American POW, by beating, kicking, and otherwise abusing him.	NG	G	Yes
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Sp 3: That on or about 3 August 1945, at Fukuoka POW Camp #8b, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully mistreat, torture, abuse and beat Michael A. Tardivo, Emmette Smith, George Martinez, Henri A. Pacheco, Edward O. Elmore, American POWs, and several other unidentified Allied POWs.	NG	G	Yes
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Sp 4: That between 1 March 1944 and 30 November 1944, and between 1 April 1945 and 31 August 1945, at Fukuoka POW Camp #8b, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully misappropriate and convert to his own use Red Cross supplies intended for the use and benefit of Allied POWs. NG G Yes

Sp 5: That between 1 March 1944 and 30 November 1944, and between 1 April 1945 and 31 August 1945, at Fukuoka POW Camp #8b, Fukuoka Area, Kyushu, Japan, accused did willfully and unlawfully mistreat, torture, abuse, and beat numerous American and Allied POWs. NG G Yes

3. Summary of the Evidence:

a. For the Prosecution:

Donald Francis Ingle, a former prisoner of war, and other witnesses, identified the accused (R. 65, 67, 175, 175A, 246). Goto was known and referred to by the prisoners of war as "Hopalong Cassidy", "Limpy Bastard", and "Limpy". The accused Ota was known and referred to by the POWs as "Meat King", and Eto was known as "Slimey."

SHUICHI TAKATA

As to Specification 1: The prisoners of war were quartered in barracks about 100 feet long. Each POW had a space of about six feet by three feet for sleeping. The barracks were full of lice, fleas, and rats and when it rained the water blew in through the doors and windows. No effort was made on the part of the camp commander, Takata, to correct the unhealthy conditions. On several occasions, the rations were reduced during the tour of duty of the accused Takata (R. 69, 70). The prisoners of war were all losing weight because of insufficient food and the unhealthy conditions in the camp. On or about 17 August 1945, the accused advised the POWs that the war was over and that the rations would be reduced for the purpose of giving them to the Japanese civilians then working at the mine (R. 71, 72). The witness stated that the POWs did not receive proper medical care and attention and were continually neglected as to medical treatment and medicines (R. 73, 74). The witness testified that on numerous occasions Takata was informed of the then existing conditions in the camp and was requested to improve the same which was never accomplished (R. 74, Ex 12, 13, 25, 38, 39, 42 R 176, 178, 179, 180, R. 247, 248, 249, 250, 251.)

As to Specification 2: During the month of May 1945 and between the 31 August 1945 the accused was seen wearing a pair of Red Cross shoes and a pair of Red Cross gloves (R. 74, 76, 180, 181, Ex. 38).

As to Specification 3: The prisoners of war were forced to work at the mines in shafts which were not properly propped against cave-ins. The working places were filled with water and continual seepage occurred. The prisoners' clothing was wet during all the working hours, which created chills and other diseases. The ventilation was bad. The entrance to the mine was dangerous and slippery and numerous POWs suffered injury going to and from their work (R. 74, 75). Many of the prisoners of war were seriously ill, but were forced to work in the mines. The witness testified that the accused never inspected the mines to his knowledge (R. 77, 171, 184, 187, 188; Ex 8, 12, 13, 21, 25, 37, 38, 39, 43).

As to Specification 4a: (See Specification 3, Goto; Specification 4, Ota.) The summary of evidence therein applies to this Specification (Ex. 29).

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As to Specification 4-b: (See Specification 1; Goto. The summary of evidence therein applies to this Specification. Ex 1, 2, 6, 7, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 22, 24, 36, 40, 44).

As to Specification 4-c: (See Specification 3, Ota.) The summary of evidence therein applies to this Specification. (Ex 1, 2, 6, 7, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 22, 24, 36, 40, 41, 44).

As to Specification 4-d: (See Specification 4, Goto. The summary of evidence therein applies to this Specification, Ex 8).

As to Specification 4-e: (See Specification 1, Eto.) The summary of evidence therein applies to this Specification. (Ex 17, 23, 27, 40).

As to Specification 4-f: (See Specification 1, Ota.) The summary of evidence therein applies to this Specification.

As to Specification 4-g: (See Specification 2, Ota.) The summary of evidence therein applies to this Specification (Ex 34, 43).

As to Specification 4-h: (See Specification 3, Ota.) The summary of evidence therein applies to this Specification (Ex 1).

As to Specification 4-i: POW Stevens and POW Tardivo were severely beaten by "Sakai-San", a Japanese guard, who used his fists upon the POW for about fifteen minutes (Ex 13, R. 88, 89, 192, 173, 254).

As to Specification 4-j: During the month of July 1945, POW Erba and an unidentified Dutch POW were struck and beat by a Japanese guard called "Stiff Leg" with his fists. Accused Takata watched the beating (R. 90, 91, 134).

As to Specification 4-k: On or about the month of July 1945, a Japanese medical orderly named "Sakai" beat POW Stevens and Tardivo (R. 173, 192, 254).

As to Specification 4-l: POW Martinez was severely beaten with an iron rod until he became unconscious by a mine foreman (R. 193; Ex 17).

As to Specification 4-m: During the month of June 1945, POW Martinez was beaten by a Japanese guard with a wooden rifle (Ex 17, 40, 41).

As to Specification 4-n: During the dates of 1 May 1945 and 31 August 1945, Japanese guards and mine foreman severely beat numerous POWs while working in the mines (Ex 2, 12, 13, 24, 26, 36, 39, 43, 45; R. 78, 188, 189, 239).

TOSHIO GOTO

As to Specification 1: On or about 9 August 1945, the accused severely beat and abused POW Groos, a Dutch POW, and POW Elmore, an American POW (R. 83, 91, 126, 134; Ex 1, 2, 6, 7, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 22, 24, 36, 40, 44, 126, 134).

As to Specification 2: Accused did, in or about the month of August 1945, severely beat and strike POWs Tardivo, Smith, Martinez, Pacheco, Erba, Greer, and other POWs (R. 91, 83, 126, 134, 254, 255; Ex 1, 2, 6, 7, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 22, 24, 36, 40, 44).

As to Specification 3: Between 1 May 1944 and 31 August 1945, the accused misappropriated to his own use Red Cross supplies. He was seen to enter the Red Cross storeroom and leave with a side bag containing Red Cross supplies; smoking cigarettes, the butts of which he threw down and numerous POWs picked up same and identified them as American cigarettes (R. 76, 180, 183; Ex 5, 21, 38).

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As to Specification 4: On or about 1 August 1945, the accused severely struck and beat Reillich, an American POW, using his fists and a bamboo fighting stick. The POW's eyes were blackened and lacerations were made over his eyes. He was bleeding profusely (R. 85, 136, 137, 190; Ex 5, 8).

As to Specification 5: Between the dates of 1 May 1944 and 31 August 1945, the accused on numerous occasions hit, struck, and beat numerous Allied POWs while working in the mines by using his fists, clubs, and other instruments (R. 83, 126, 134, 78, 91, 194, 258, 254, 255; Ex 3).

SHIGEKI ETO

As to Specification 1: In or about July 1945, the accused severely beat and struck POW Keller, an American POW, by using a wooden rifle, striking the POW over the head and shoulders for about fifteen to twenty minutes. The accused struck the POW while his arm was in a sling and re-broke the arm, and immediately thereafter he beat the POW again at which time another Japanese guard participated in the beating. The POW was knocked to the ground and accused then kicked him. The POW was taken to the hospital where the re-broken fracture of his arm was dressed. The POW lost the use of his left hand, wrist, and fingers (R. 85, 86, 87, 92, 139, 141, 191, 256; Ex 17, 23, 37, 41, 42, 43).

As to Specification 2: In or about the month of July 1945, the accused beat POW Gerbranda and a Dutch POW (R. 260, 261; Ex 21, 41).

As to Specification 3: Between 1 February 1943 and 31 August 1945, the accused did on numerous occasions beat, strike, and kick numerous American and Allied POWs working in the mines, using his fists, bamboo stick, and wooden rifle, and other instruments that he would pick up at the time (R. 260, 261; Ex 12, 13, 17, 18, 29, 30, 40, 41).

BENJI ITO

As to Specification 1: In or about the month of January 1944, the accused mistreated, beat, and struck POW Cox, a British POW (Ex 1).

As to Specification 2: In or about the month of February 1945, the accused mistreated and severely beat POW Wakes, a British POW, using a hammer or pick axe and striking him over the head and shoulders until the POW became unconscious (Ex 3, 43).

As to Specification 3: In or about January 1945, the accused severely beat and struck POW Marriner, a British POW, striking him with the flat side of a pick axe while working in the mines (Ex 27).

As to Specification 4: In or about the month of July 1945, the accused did severely beat and strike with his fists and an axe handle POW Clarke while working in the mines (Ex 29).

As to Specification 5: Between 1 October 1943 and 31 August 1945, the accused severely struck, hit, and beat POWs Careless, Collins, Brandon, Seaward, Kelsey, Halliwell, Jones, and Clynes, British POWs. (Ex 1, 2, 3, 27, 30, 31, 32, 43).

As to Specification 6: Between the dates and during the time of 1 October 1943 and 31 August 1945, the accused on numerous occasions while POWs were working in the mines did strike, beat, kick, and otherwise abuse numerous Allied and American POWs (Ex 26, 27, 33).

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TSUZUO OTA

As to Specification 1: On or about the 20th of July 1945; the accused did severely beat and strike POW Tardivo, an American POW, by beating and striking him with a bayonet and with his fists, severely injuring the POW (R. 89, 90, 134, 257).

As to Specification 2: On or about 1 July 1945, the accused did severely beat, kick, and strike POW Garrison, knocking the POW to the ground and then kicking him. The POW was at that time weak and in a debilitated condition. (R. 90, 257; Ex 4, 18, 34, 43).

As to Specification 3: On or about 8 August 1945; the accused severely beat and struck POWs Tardivo, Smith, Martinez, Pacheco, and Elmore, American POWs, and several other unidentified Allied POWs by striking them with his fists, a bamboo fighting stick, and an iron rod, while they were working in the mines (Ex 19, 22; R. 134, 138, 193, 254, 255).

As to Specification 4: Between and during the dates of 1 March 1943 and 30 November 1944 and during and between the dates of 1 April 1945 and 31 August 1945, the accused, while working at the camp, did misappropriate and use numerous Red Cross supplies furnished for the use and benefit of POWs by removing them from the warehouse and consuming the Red Cross supplies for his own benefit (Ex. 4, 19, 21).

As to Specification 5: During and between the dates of 1 March 1944 and 30 November 1944 and during and between the dates of 1 April 1945 and 31 August 1945 the accused on numerous occasions struck, beat, and kicked, and slapped numerous Allied and American POWs (R. 259, 260; Ex 4, 18, 21, 22, 43).

b. For the Defense:

Isamu Sakada (R. 316) testified for the defense and stated that he was acquainted with the accused. He was the labor section liaison between the Army and the mining company who were working the POWs at their various mines. He handled all food orders and requests of the camp. The company furnished rations to the POWs. He stated that the POWs were issued 735 grams of food. This ration was reduced during the tour of duty of the accused Takata (R. 318) to 600 grams. Accused Takata made several requests that additional food rations be issued. At times, extra rations were purchased for the POWs (R. 319, 320).

The defense called two witnesses for the purpose of identifying the amount, weight, and volume pertaining to 705 grams of uncooked and cooked rice which was represented by Exhibit E, being a picture of the original bowl of cooked rice (R. 320). Goats, pigs, and chickens were kept at the prisoner of war camp for the use of the prisoners. Milk and eggs were given to sick POWs. Vegetable gardens were planted from which the POWs were furnished vegetables (R. 326, 329).

Captain Forbes (POW) (R. 365) was called as a defense witness. He stated that there were two POW gardens, that the POWs received most of the vegetables, although many POWs stole vegetables from the gardens because of their hunger. The food situation in Japan at the time, he understood, was bad (R. 365-367). The witness testified that he never saw the accused Takata wearing Red Cross shoes or gloves, that no report came to him from the POWs accusing Takata of stealing Red Cross supplies or any report against Goto (R. 368). Takata had the company change one of the POWs working places because of the conditions. He did not think Takata had any authority to prevent POWs from working in the mines (R. 370). He stated that POW Elmore's reputation for truth and veracity was bad. Slapping was a general practice of the Japanese as a method of punishment. During his confinement, he observed several Japanese being slapped and punished by other Japanese (R. 370). The witness stated that he heard that the accused Goto on one occasion had reprimanded a Japanese guard for abusing a POW by forcing bamboo slivers under the POW's fingernails (R. 372). He also stated

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that POW Tardivo's reputation for truth and veracity was bad (R. 370). POW Garrison's reputation was also bad. The witness testified that so far as he knew there were no American officers abused by Takata. He was never informed or were any reports ever given him that accused Oto, the "Meat King", took or appropriated Red Cross supplies to his own use. He stated that the accused Eto was extremely brutal in punishment given to POWs. Accused Goto was very harsh in his treatment toward the POWs. The accused, Oto, was very brutal.

Sugimoto was recalled and identified a brown pair of Army shoes offered as an exhibit. He stated they were the kind approved by the Japanese Army in the year 1945 (R. 377) for officers.

Shishima Shuego (R. 381) testified that he was the civilian medical officer employed by the mining company to treat sick POWs. He attended the sick calls at the POW Camp. Medicines and medical supplies were scarce in Japan at the time. The bathing facilities consisted of one Japanese bath and that there was always plenty of hot water. He stated that the accused Takata knew of the abuse administered to POW Groos and was advised of the POW's broken sternum. He described the hospital facilities of the mining company and described the hospital facilities of the mining company and described the hospital provided for the POWs at the camp (R. 381-390).

Michio Oshita (R. 415) stated that he was in charge of the labor section for the mining company and had been so employed since 1936 up to the date of appearing before the Commission. He was acquainted with the accused. His duties with the company were connected with the provisions for the camp and food, and also keeping records of the distribution and purchases made by the company for the POW Camp (R. 416). He stated that the accused Takata on several occasions requested that more food be supplied to the POWs, and that his requests were channeled through the company officials (R. 418). Orders were received from higher command that certain records be burned (R. 419).

Mitsugu Maeda (R. 427) occupied a position as secretary of the ration board for the mining company and stated that he took care of the food rations for the prisoners of war, including Japanese personnel attached to the camp. He recalled that accused Takata had made requests for additional food (R. 428), that the original ration for the POWs was 570 grams but that it was reduced to 400 grams, then to 360 grams (R. 434).

Mitsuzo Koiki (R. 442) testified and stated that he was assigned to general affairs at the POW camp and that he had charge of the Red Cross supplies (R. 443). During his duty at the camp they received no Red Cross shoes or gloves. The camp in general was infested with fleas and lice. The Japanese personnel also suffered from these insects. Some spray was used to eliminate the lice (R. 449). Clothes were boiled in the Japanese-style bath (R. 450). He stated that the food served to the POWs was a little less than that served to the Japanese personnel (R. 452). Extra rations were purchased from the mining company's fund provided for the POWs (R. 454-456). The accused Takata had instructed the guards that prisoners of war must not be punished by them (R. 456). He never observed the accused Takata strike or abuse prisoners of war (R. 457). On several occasions, he personally heard Takata reprimand different guards who had mistreated prisoners of war (R. 457, 458). He had possession of the keys to the warehouse. On leaving camp, he would leave the keys with the accused Goto or Fujikawa (R. 462).

Tarao Uno (R. 494), a disabled Japanese veteran, stated that he was employed at the camp. The accused Takata had instructed him and others that POWs were not to be abused or mistreated and he knew that Takata had followed up his orders to protect the POWs (R. 494-497).

Iso Totoshiki (R. 497) stated that the working agreement for the use of prisoner of war labor was between and under authority of the Ministry of War (R. 497-503). He testified as to the method of distribution of Red Cross supplies upon orders from the Main Camp to the dispatch camp authorizing and directing the distribution of Red Cross supplies to POWs (R. 503, 504).

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Sueo Sugimura (R. 508) stated that he was the representative of the head of the mining affairs section and was a graduate from the technical school in the year 1930. Prisoners of war were employed and had worked for the mining company since 1943 to his knowledge which was prior to the accused Takata taking command of the POW Camp. On one occasion, the accused Takata had requested that prisoners of war be removed from one mine to another because of the dangerous conditions, that the company did remove the prisoners to another working mine. Takata requested that the POWs be treated kindly and that the guards observe strictly the rules, on occasions, Takata visited and inspected the working places (R. 509-512). Accused Takata had supervisory duties over POWs working at the mines (R. 516).

Uichi Sueishi (R. 524) had been employed by the mining company for 25 years. He identified the accused and during the accused Takata's tour of duty he worked at the POW camp under Sakata. His duties were to drive a cart and pick up vegetables and other rations for the camp which he delivered to the POW kitchen (R. 525-527).

Tadaki Toyomoto (R. 529) had been employed by the mining company since 1922. He was in charge of one of the mines designated position as "head in charge". His duties were to inspect, plan construction, and general over-seeing the mine. He testified as to the working conditions and safety of the mine in general. There were sufficient Japanese over-seers on the job to direct the work of the POWs and to protect them, although a few of the POWs were injured. The witness stated that he heard of no rumors as to sabotage by POWs and never observed the mistreatment of any POW by the Japanese foremen (R. 527-533).

Takeshi Seki (R. 544) a colonel in the Japanese Army and at the time of his appearance before the Commission was assigned to the Demobilization Bureau, testified that the accused Takata served under him when he was regimental commander and that Takata's reputation was indeed good (R. 544-546).

The accused Goto, having been duly advised of his rights as a witness by defense counsel, elected to be sworn and testify in his own behalf (R. 4). He stated that he was a civilian in the employ of the camp, that his duty was assistant in general affairs, that he kept the records, and was given other assignments by his superiors (R. 551). He and Sergeant Kocki carried the keys to the Red Cross warehouse (R. 556). During the month of June he received orders to make distribution of some of the Red Cross supplies to the prisoners of war. He and others together with Captain Williams (POW officer) removed boxes of Red Cross supplies containing cigarettes, chocolate, raisins, cheese, sugar cubes, chewing gum, and toilet articles, and they were given to Captain Williams to be distributed to the POWs (R. 557). When shoes and gloves arrived they were turned over to POW Captain Williams. On occasions POW Captain Williams brought Red Cross supplies to the Japanese office and requested the accused Takata to distribute them among the Japanese personnel (R. 558, 559). The accused stated that he at no time misappropriated or used Red Cross goods or clothing as charged in the specification (R. 559). The vegetables grown in the gardens by the POWs were used by the POWs, but at times the Japanese personnel used some of the vegetables grown in the gardens (R. 562, 564).

As to Specification 1: The accused stated that during the month of August he beat a Dutch POW who had stolen vegetables from the garden, and that the POW lied to him and he became angry and beat him with his hands and then struck the POW with a bamboo fighting stick (R. 564). He later learned that this POW was in the hospital with broken chest bones. He gave the POW 180 yen as a "gift of sympathy" (R. 566, 588, 589, 590). The accused Takata was present at the time of the punishment given to this POW (R. 583).

As to Specification 2: The accused stated that during an air raid six or seven POWs would not leave the entrance and he struck them with his hands (R. 567).

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As to Specification 3: The accused stated that he at no time stole or misappropriated Red Cross supplies (R. 570). He testified as to how Red Cross boxes were delivered to the camp and the routine of checking with the prisoner of war officer and his checking and acknowledging the receipt of the supplies (R. 570).

As to Specification 4: The accused denied having struck or abused the prisoner of war as charged. He did see him and his face was bleeding. He was told that this POW had been in a fight with one of the Japanese foremen at the mine. The accused sent the POW to the dispensary (R. 567, 568).

As to Specification 5: The accused stated that in some cases he slapped POWs for violations of camp regulations with his open hand, that on other occasions he stopped and prevented the beating and abuse of POWs by other camp personnel (R. 568). When new POWs were assigned for work at the mines he made an inspection and saw that they were properly worked and instructed. One POW was beaten by Japanese personnel at the mine, but that the POW returned to camp, and on this occasion Takata, Sergeant Kocke, and himself, with the POW returned to the mine and investigated the person who beat the POW. This person was reprimanded by the accused Takata who also reported him to the company (R. 569).

The accused Eto, having been duly advised of his rights as a witness by defense counsel, elected to be sworn and testified in his own behalf (R. 4). He stated that he was a civilian employed by and working for the mining company from whom he received his pay.

As to Specification 1: The accused stated that POW Keller failed to salute the guard, accused struck him on the buttocks with a wooden rifle (R. 615). He did see the POW with his arm in a sling, that the guard commander instructed him to strike the POW, which he did (R. 616, 624, 625).

As to Specification 2: The accused testified that POW Gerbranda was giving him some instructions in the manual of arms and upon completion of the instructions the POW handed the wooden rifle back to the accused which he playfully took and made a thrust towards the POW, but he did not strike him (R. 617).

As to Specification 3: The accused stated that during the month of August 1943 he was not in camp. He went to work in April 1944 and stayed to the end of the war (R. 618). Besides POWs Gerbranda and Keller he did, during the month of August 1945, tap a POW on the buttocks for not removing his shirt and coat while working (R. 619, 620). On another occasion, he struck the POW with his open hand because the POW was in the bathroom washing clothes with dirty shoes on (R. 619).

The accused Ito, having been duly advised of his rights as a witness by defense counsel, elected to be sworn and testified in his own behalf (R. 4). Accused stated that he was supervisor of the British POWs, who were working at the mine (R. 638, 639).

As to Specification 1: The accused stated that he found POW Cox sleeping when he was supposed to be working. For this offense, the accused slapped him (R. 639).

As to Specification 2: The accused stated that he slapped POW Wakes with his hand but that he did not use a hammer as alleged in the specification (R. 639).

As to Specification 3: The accused stated that he did not remember POW Marriner; during the dates alleged in the specification he was in the hospital and he did not strike the POW with a pick axe nor did he in any other way mistreat the POW (R. 640).

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As to Specification 4: The accused stated that he did not recall the prisoners of war named in the specifications nor did he remember any such abuse, denying that he ever mistreated the POW.

As to Specification 5: The accused stated that he at no time mistreated, kicked or otherwise abused prisoners of war and that some of those named in the specification had visited his home and were served tea after the war had ended (R. 641, 643).

As to Specification 6: The accused denied that he abused the POW as charged in the specification (R. 643). During his tour of duty as a supervisor of the prisoners of war, in January 1945, he slapped a POW for not working after he had instructed the POW to work (R. 643). He was reprimanded by the head supervisor of the mine; he promised not to abuse or strike any other POWs. He stated that from then on until the end of the war he did not abuse any POWs (R. 643, 644, 648, 649).

The accused Ota (R. 569), having been duly advised of his rights as a witness by defense counsel, elected to be sworn and testified in his own behalf (R. 4.).

As to Specification 1: He stated that he was employed by the mining company and was assigned in charge of the vegetable gardens. He had the supervision and security of the POWs that were working in the gardens. He stated that POW Tardivo refused to obey an order and that he forcefully hit the POW with his hand three or four times. He never used a weapon or his fists (R. 696, 664, 665).

As to Specification 2: The accused stated that POW Garrison was beaten by him quite forcefully, that he struck the POW four or five times with his hands (R. 660, 661, 664).

As to Specification 3: Accused stated that during the time the POWs were reprimanded, investigated, and beaten for stealing vegetables he was confined to the guardhouse and that he took no part in the investigation or mistreatment of the POWs (R. 661, 663, 669).

As to Specification 4: The accused stated that he was doing guard duty when several POWs were opening a box of Red Cross canned food, that he took one can and put it on a box nearby. Captain Williams, POW, told him to return it, which he did, at no other time or on any other occasion had he touched Red Cross supplies (R. 661, 666).

As to Specification 5: The accused denied abusing twenty or more POWs on numerous occasions. The incident in which Captain Forbes testified about, there were only about six or seven POWs present (R. 662). On one occasion he apologized to a POW whom he had slapped (R. 662, 666).

The accused Takata, having been duly warned and advised of his rights as a witness by defense counsel, elected to be sworn and testified in his own behalf (R. 4). The accused stated that he was assigned as camp commander of the prisoner of war camp and reported for duty May 1, 1945 (R. 672, 673).

As to Specification 1: When he took charge of the camp the food conditions in Japan were very bad and limited and that it was necessary to purchase supplemental rations upon the black market. At the time the food rations were distributed to the POWs in the amount of 705 grams each; he received an order from higher command to reduce the rations (R. 680). He stated generally as to the supply of food furnished by the company and the occasions on which he requested the company to furnish extra rations for the POWs working at the mines; he advised the company that if they wanted the POWs to do their work it would be necessary to give them more food as he had discovered that their weight was declining from the month of May to June and on another occasion made a request for more food in July because of the declining weight of the POWs (R. 681, 682, 684). On occasions he had requested the company to repair the barracks and to put

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tile on the roofs. The food was supplied by the company who also furnished and supplied the quarters and medicines for the POWs (R. 685, 689, 741).

As to Specification 2: The accused stated that the boots which he wore at the camp during his tour of duty were purchased from a Japanese Army store and also the gloves which he wore were of a green color, that they were not Red Cross issue and that he at no time took or appropriated Red Cross supplies to his own use (R. 690).

As to Specification 3: The accused stated he inspected the working places of the POWs and gave general instructions to the supervisors and Japanese employees as to how they should treat the POWs. On one occasion, he returned to the mines and made an investigation of a Japanese who had mistreated one of the POWs; he reprimanded him and reported him to the company. After this incident, he received no further complaints as to abuses of POWs for some time, when it was then reported that three or four more POWs had been abused. He again investigated and reprimanded the Japanese foreman (R. 691, 692).

As to Specification 4-a: The accused stated that the distribution of Red Cross supplies came from higher command. Upon receipt of orders to distribute Red Cross supplies to POWs, he would call POW Captain Williams who accompanied them to the warehouse at which time the supplies would be delivered to the POW Captain Williams for distribution to the POWs (R. 696). During his command, he made two distributions of supplies. On no occasion did he steal Red Cross supplies nor did he authorize any of the Japanese personnel attached to the camp to steal or use Red Cross supplies. He was never notified or given any report of anyone stealing or appropriating supplies to their own use (R. 698, 699). On two different occasions POW Captain Williams came to his office with one of the POWs carrying Red Cross supplies which had been distributed to the POWs and that Captain Williams requested that accused make distribution of the articles to the Japanese personnel (R. 699).

As to Specification 4-b: The accused stated that he slapped an American POW for having stolen vegetables from the garden (R. 701). He observed accused Goto slap a Dutch POW who was also charged with stealing vegetables from the garden (R. 701). On his return to the office there were seven POWs sitting upon planks with their hands raised. They were also charged with stealing vegetables from the garden and confessed the theft. They were reprimanded (R. 702). He noticed that the Dutch POW was pale. The accused ordered that he be taken to the dispensary. He later learned that this POW's breast bone had been broken (R. 702, 703).

As to Specifications 4-c to 4-m, inclusive: The accused stated that he had no knowledge or information concerning the abuses charged in those specifications (R. 704).

As to Specification 4-n: The accused stated that a prisoner of war had been instructed to pick egg plant and that accused Oto, on his return, discovered that the POW had picked and pulled the shoots from two hundred to three hundred of the plants and that Oto beat him for this offense.

POW Captain Fobes had reported to him that accused Eto had beat a POW. He investigated and accused Eto told him that the POW had not saluted. He reported accused Eto's conduct to the company who fired him, but the company later asked to have him re-hired (R. 705). He stated that he had instructed the guards and all Japanese personnel that the POWs should be treated with kindness and not abused (R. 706). He stated he had no authority as to when or where the POWs were to be worked or what kind of work would be assigned them or where the food would be obtained and issued. All these matters were under the control of the company (R. 714). The accused stated that he left the administration of the prisoners of war up to POW Captain Williams. He made two daily inspections of the camp and that he had inspected the mines five or six times while he was in command (R. 721).

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Yoshiko Hattori (R. 746) was called as a witness for the defense; he stated that he was head of the labor section for the mining company who hired and worked the prisoners of war in their mines (R. 747). He stated that the accused Takata could inform the company as to any abuses the company employees might commit on POWs and could request the person be fired or removed from the job to another mine (R. 748). He testified as to the working conditions of POWs and as to the authority Takata was given (R. 746-756).

4. Opinions:

a. There are no errors or irregularities appearing in the record of trial which injuriously affect any substantial rights of either of the five accused. The record of trial discloses that the trial was held without partiality and that adequate opportunity was given to each of the accused to present any matters in his individual defense that he might desire. The accused were ably represented by the Japanese and American defense counsel and each accused fully cooperated in his own defense. There is no evidence that either of the five accused convicted herein were insane or otherwise incompetent at the time of the trial or at the time of the alleged offenses. Insanity was not an issue as to either of the five accused herein convicted.

b. There have been no questions raised in the record of trial that were not decided by the Commission upon the hearing of the evidence presented. Two - thirds of the members of the Commission present at the time the findings were arrived at and the sentence imposed concurred in the result.

c. The various objections made during the trial, the rulings of the Law Member thereon, the errors and irregularities appearing in the record of trial, and the alleged errors called to the attention of the reviewing authority in the defense motions have heretofore been passed upon in numerous reviews of this headquarters. In view of these former holdings, further discussion concerning the ~~motions~~ and objections would be mere prolixity, since the questions have heretofore been passed upon and approved by this headquarters. The alleged errors complained of by defense (R. 8, 15, 18, 25, 51, 282, 289, 290, 305, 492, 494) (objections; R. 16, 18, 25, 51, 54, 64) (irregularities R. 64, 196, 280, 282, 307, 310, 761) cannot be considered prejudicial to the rights of the accused. (Case Docket No. 124, Kato; No. 97, Fukui; No. 39, Hirata; No. 55, Murakami; No. 206, Ishizaki et al).

d. There is sufficient legal evidence in the record of trial which in itself supports the findings and sentences of the Commission; in view of the compelling evidence of guilt properly in evidence which is of such quality and quantity as practically to compel in the minds of conscientious and reasonable men the findings of guilty.

e. The charges and specifications herein against each of the five accused allege violations of the laws and customs of war, committed by the individual accused who were enemy nationals against members of the United States Armed Forces and its Allies at a time when a state of war existed between the United States of America and its Allies and Japan. Accordingly, the Commission which was appointed to hear the case had jurisdiction of each of the accused and of the subject matter under SCAP Regulations, File AG 000.5 (5 Dec 45) LS, Subject: "Regulations Governing the Trials of Accused War Criminals", (and amendments thereto) as established by the Supreme Commander for the Allied Powers. The prosecution introduced evidence by means of three (3) former POWs who personally appeared before the Commission and testified, and the introduction of 42 affidavits of former POWs who had been interned in the camp and who were in a position to know the facts of the matters in issue.

f. The sentence of the Commission as to each of the accused is considered legal and is not excessive for the number of crimes for which each accused was convicted.

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5. Recommendations:

There were numerous letters and petitions for clemency from the accuseds' families and from numerous citizens of each accuseds' community, two former POWs, and the prosecuting attorney, asking the reviewing authority to reduce, modify or vacate the sentences. These letters and petitions have been considered. However, they reflect no new or additional evidence and had they been considered by the Commission would not have justified any change in the sentence. It is recommended that the sentence as to each accused be approved.

Takata was confined 28 November 1945, sentenced 26 March 1947 to confinement at hard labor for forty (40) years; credit for confinement prior to trial thirteen (13) months. The evidence discloses that this accused was not sufficiently trained to command a POW Camp. Although a part of his duties, during the few months he was in command, he took immediate action and investigated all complaints made by the POW officers as to abuses committed upon POW, reprimanding the guilty. He tried to correct the food situation and living conditions in the camp. Two former POW officers, Captain Williams, British, and Captain Fobes American, both submitted letters (Vol III) recommending clemency as to accused. Mr. Deitch, civilian attorney who prosecuted the case, submitted his letter to the Legal Section, GHQ, SCAP, recommending clemency and reduction of the sentence. The facts justify consideration be given to a reduction of the sentence. It is therefore recommended that the sentence be approved, but in view of the mitigating circumstances twenty-five (25) years of the confinement at hard labor imposed be remitted.

Goto was confined 22 November 1945, sentence 26 March 1947 to confinement at hard labor for forty (40) years; credit for confinement prior to trial thirteen (13) months.

Eto was confined 4 November 1946, sentenced 26 March 1947 to confinement at hard labor for a period of thirty (30) years; credit for confinement prior to trial, one and one-half (1 1/2) months.

Ito was confined 23 September 1945, sentenced 26 March 1947 to confinement at hard labor for a period of twenty (20) years; credit for confinement prior to trial three (3) months.

Ota was confined 4 November 1946, sentenced 26 March 1947 to confinement at hard labor for thirty (30) years; credit for confinement prior to trial one and one half (1 1/2) months.

It is recommended that Sugamo Prison, Tokyo, Honshu, Japan, be the appropriate place of confinement for all of the accused.

6. Action:

Attached hereto are forms of action designed to carry into effect the above recommendations should they meet with your approval.

GEORGE R. TAYLOR.
Reviewer
Judge Advocate Section

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The cases against the various accused were proved by substantial evidence. No prejudicial error is discovered after a close and careful study of the entire record, briefs submitted by the accused, additional information supplied by counsel for the accused as attached to their briefs and allied papers. The foregoing review omits discussion of several of the defense's more important claims of error. The assertion by defense counsel that the court was not impartial is not borne out by a scrutiny of the record; this reveals that the Commission was eminently fair to both sides.

Defense counsel alleged that they were unduly restricted in voir dire examination of the Commission preliminary to possible challenge by a statement of the President of the Commission made before trial and out of court in which he is alleged to have limited interrogation of the Commission beyond the point referred to in the review of the first Namba Case, No. 149. It is implied, if not urged, that defense counsel were intimidated to the point that they failed to make pertinent or desired inquiry of the Commission members preceding possible challenge and in fact affirmatively stated that they had no objection to members on the Commission. The following is noted (R 3, 4):

"PRESIDENT: Does the Defense desire to challenge any member of the Commission for cause?

DEFENSE: May it please the Commission, on this matter of challenges, the Defense would like to propound the following questions to each and every member of this Commission. We would like to know whether any member of this Commission knows any of the accused on trial here today. We would also like to know whether any of the Commission members expect to be called as witnesses in the trial of this case; or whether they have any previous knowledge of the facts of this case covered by the charges and specifications; and we would like to know whether or not there is any reason that they know of why they cannot sit and try this case impartially.

PROSECUTION: The Prosecution objects to such questions being directed to the Commission. SCAP has outlined the rules of procedure. This is not a civil trial. This is not a jury trial. Each member of the Commission is a judge. I expect to stand by and stick by the SCAP rules and regulations. I think the Defense should do the same.

DEFENSE: May I reply to that?

PRESIDENT: You may.

DEFENSE: I would like to point out to the Prosecution Counsel that those matters which I touched on, upon the challenges, are specifically provided for in the Army Courts-Martial Manual, and I think they are in no way improper in the trial of this case.

PRESIDENT: The Commission is bound by the SCAP regulations which also state the Commissions are not bound to follow the procedures laid down in the Manual for Courts-Martial; and I believe counsel is aware that the Manual for Courts-Martial provides that the Prosecution shall, during the opening phases of the Court, request any member of the Commission or court to ascertain if he has any knowledge of the facts in the case, has formed an opinion as to the guilt or innocence of the accused, or will be called as a witness for the Prosecution. If so, he will so answer, in order that he may be excused. This Commission is of the opinion that the remarks made by the Defense Counsel are perfectly proper; and the Commission

will now ask the members if they have any opinion, if they have any knowledge of this case, or if they will be called as witnesses.

PRESIDENT: Apparently not.

DEFENSE: The Defense would like to state for the record that that being the case it has no objection to any member of this Commission sitting in the trial of this case.

PRESIDENT: Is the Defense ready to proceed with the Commission as it is now constituted?

DEFENSE: Yes, sir, we are entirely willing to do so."

In view of these statements in open court, coupled with the knowledge of the undersigned as to the personal characteristics of each defense counsel (which do not include timidity, but the reverse), added to the available and sporadically employed expedient of administrative complaints to chief of defense counsel and by him to appropriate authorities where defense considers its rights are prejudiced, it is inconceivable that any form of duress was instrumental in preventing that full, articulate and vociferous declaration of the accused's rights which is invariably presented by counsel in the war crimes trials. The complaint, therefore, contains elements to be found in practice of inviting error or "lying in wait." Even if such were the case, however, it is not determinative under the liberal rules employed by the Reviewing Authority in these cases. In any event, there is no reason to believe that the accused were denied any right of proper inquiry or were prejudiced. The conduct and rulings of the court as shown by the record and the results were proper and appropriate. (Cf. CM 248189, 31 BR 171; CM 219582, 12 BR 307).

The objection to failure by the Commission to require verbatim translation is not sound in the light of the SCAP rules which provide only that the substance be translated. This is confirmed in Takata brief, P 26.

The credibility of several of the prosecution's witnesses was attacked by defense and some support for their position may be found in the testimony of Capt. Fobes. Nevertheless, it is noted that the specifications under which the accused were convicted were supported in substantial respects by evidence from several sources. For example, light on the abuses of Keller as charged in Takata, Specification 4c and Eto, Specification 1 is to be found in Exhibits 17, 23, 37, 41, 42, 44, R 85, 86, 87, 92, 139, 141, 191 and 256.

Evidence is given concerning the Tardivo abuses charged in Takata, Specification 4c, 4f, 4i and Ota, Specification 1, 3 at the following points in the record: Exhibits 10, 14, 17, 19, 22, 24, 40, R 88, 89, 173, 192 and 254.

The sentences of the respective accused are discussed hereafter:

Goto - Conviction of three specifications of multiple mistreatments, involving more than eight accused plus one of a routine type beating and one of conversion of Red Cross supplies to his own use, (the mistreatments involving one instance of jabbing the sternum viciously with a weapon and resulting in a fracture of bone and unconsciousness), justifies the sentence of forty years. The prisoner, who suffered the fractured bone, was apparently seriously injured and that assault alone was of an aggravated, vicious and sadistic nature.

Takata - The culpable and criminal neglect of duty to protect the POWs which resulted in crimes such as those appearing in this case impel the recommendation of approval of the forty years sentence against the camp commander. He was properly convicted of offenses charged in specifications including command

responsibility for abuses of approximately 19 named victims plus many unnamed, conversion of Red Cross supplies, sending prisoners to dangerous work, supplying poor food and quarters. However, in mitigation it is noted that several prisoners have themselves urged, since the trial, that clemency be exercised. This accused is said to have toned down the abuses of Eto, to have punished Ito. Execution of a sentence of five years has been suggested. The prosecution counsel is quoted as informally agreeing that such a sentence is appropriate. Accused's wife in a petition is concerned chiefly that he not be stamped a thief but does not stress particular horror at his permitting brutal beatings - a strange sense of honor. The opinions of the POWs themselves, however, are very persuasive to fair-minded people. It cannot be successfully argued that the sentence itself is not appropriate. Clemency is another matter. In the light of statements by various prisoners that this accused erred partially through weakness rather than entirely through willfulness and viciousness, and because of unusual specific acts of kindness to POWs, it is recommended that execution of all of the sentence of confinement, except ten years be remitted but that the sentence itself be approved.

Eto - The evidence overwhelmingly convicts this accused of a number of vicious beatings. One resulted in re-breaking a healing arm which prisoner Keller had fractured before. His affidavit reveals that as late as 3 December 1946, the fingers were 50% numb and 25% of the use of his hand had been lost, although improvement was noted. The cruel nature of this beating involving willful striking of an arm obviously injured (in a sling) makes this an aggravated assault. The lasting nature of the injury further increases the offense. Evidence furnished by defense from witness Ingle (whom defense counsel dub not credible) is that Keller voluntarily broke his own arm to avoid working in the mine. If this were true, it still would not vindicate Eto because the arm had already been broken when he came on the scene and in fact the first fracture had been weakened by an over-enthusiastic masseur. Eto's participation produced additional fractures and may well be considered by a reasonable person with the common knowledge of mankind to have aggravated the other injury greatly. His sentence of thirty years is justified.

Ito - Conviction of mistreatment of approximately twelve named persons and more than thirty unnamed, requires a recommendation for approval of the sentence of twenty years.

Ota - This accused was convicted of charges in specifications involving at least seven named persons plus one occasion involving beatings of thirty prisoners and another specification alleging conversion to his own use of Red Cross supplies belonging to the prisoners. His sentence of thirty years should not be disturbed.

It is always difficult from a personal viewpoint to recommend approval of long sentences. It must be remembered that assaults of the nature of these vicious beatings, where presented to courts in most civilized nations, would call for a sentence of approximately one year for each assault. Yet in the case of these prisoners, an element is always present which does not appear in the ordinary assault and battery. For a prisoner to raise a hand in his own defense or even to endeavor to avoid a blow meant more severe punishment if not death. In addition, the offenders had a legal and moral duty as trustees and guardians to protect the very prisoners they were mistreating. Thus, severe sentences are just sentences and are demanded by people of good will and good conscience.

A proposed alternate action to implement these recommendations as to Taketa attached.

ALLAN R. BROWNE
Lt. Col. JAGD
Army Judge Advocate